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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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BY: *WDW* DEPUTY

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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GERALD LEE MILLER,  
CDCR #C-92075,

12

Plaintiff,

13

vs.

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15 L.S. McEWEN; G.J. JANDA; R.  
16 LIZARRAGA; DR. RICHARD  
17 KORNBLUTH; PARAMO; H. AMEZCUA;  
18 S. HARDMAN; ALVAREZ; T. ALVAREZ;  
19 B. DOMINGUES; C. VILLALOBOS;  
A. CASTRO; J. FLORES; M. VITELA;  
ZAMORA,

20

Defendants.

21

Civil No. 12cv1481 BEN (WVG)

**ORDER DISMISSING CIVIL  
ACTION AS FRIVOLOUS  
PURSUANT TO 28 U.S.C.  
§ 1915A(b)(1) AND DENYING  
MOTION TO PROCEED  
*IN FORMA PAUPERIS*  
AS MOOT**

**(ECF No. 4)**

22

Gerald Lee Miller (“Plaintiff”), currently incarcerated at Kern Valley State Prison located in Delano, California, and proceeding pro se, has filed this action pursuant to 42 U.S.C. § 1983. In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 4).

23

**I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

24

As amended by The Prison Litigation Reform Act, 28 U.S.C. § 1915A obligates the Court to review complaints filed by anyone “incarcerated or detained in any facility who is accused of,

1 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions  
 2 of parole, probation, pretrial release, or diversionary program," "as soon as practicable after  
 3 docketing" and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.  
 4 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any  
 5 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may  
 6 be granted. 28 U.S.C. § 1915A(b); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010).

7 Plaintiff's Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.  
 8 § 1915A(b)(1) because it is duplicative of a Complaint he has already filed in another civil  
 9 action. Indeed, Plaintiff's Complaint contains identical allegations against the same defendants  
 10 already brought before and considered by United States District Judge Janis Sammartino in  
 11 *Miller v. McEwen, et al.*, S.D. Cal. Civil Case No. 11cv2333 JLS (WVG). A court "may take  
 12 notice of proceedings in other courts, both within and without the federal judicial system, if  
 13 those proceedings have a direct relation to matters at issue." *Bias v. Moynihan*, 508 F.3d 1212,  
 14 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

15 A prisoner's complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it  
 16 "merely repeats pending or previously litigated claims." *Cato v. United States*, 70 F.3d 1103,  
 17 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal  
 18 quotations omitted). Thus, because Plaintiff has already filed the same Complaint he has filed  
 19 in this action in *Miller v. McEwen, et al.*, S.D. Cal. Civil Case No. 11cv2333 JLS (WVG), the  
 20 Court hereby DISMISSES S.D. Cal. Civil Case No. 12cv1481 BEN (WVG) pursuant to 28  
 21 U.S.C. § 1915A(b)(1). See *Cato*, 70 F.3d at 1105 n.2; *Rhodes*, 621 F.3d at 1004.

22 **II. Conclusion and Order**

23 Good cause appearing, **IT IS HEREBY ORDERED** that:

24 (1) Plaintiff's Complaint in Civil Case No. 12cv1481 BEN (WVG) is **DISMISSED**  
 25 as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

26 (2) Plaintiff's Motion to Proceed IFP (ECF No. 4) is **DENIED** as moot.

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28 ///

The Clerk shall close the file.

7 | DATED:

~~HON ROGER T. BENITEZ  
United States District Judge~~